# National Labor Relations Board Weekly Summary of



Division of Information	Washington, D.C. 20570	Tel. (202) 273-1991

March 27, 2009 W-3201

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Michigan Infrastructure & Transportation Assn., Inc. (Walter Toebe Construction Co.) (7-CD-577; 353 NLRB No. 114) Detroit, MI March 20, 2009. The Board found that there is reasonable cause to believe that Section 8(b)(4)(D) of the Act had been violated and that there were competing claims to the work in dispute. The Board found that the work should be awarded to employees represented by Michigan Laborers' District Council, AFL-CIO based upon the factors of: certifications and collective-bargaining agreements; employer preference and past practice; area and industry practice; and economy and efficiency of operations. [HTML] [PDF]

(Chairman Liebman and Member Schaumber participated.)

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Pouk & Steinle (21-CD-665, 666; 353 NLRB No. 113) Riverside, CA March 19, 2009. The Board awarded the disputed work in this 10(k) proceeding to employees represented by International Brotherhood of Electrical Workers, Locals 47 and 440, rather than to employees represented by Southern California District Council of Laborers, Local 1184. In making this award, the Board found that there was a reasonable cause to believe Section 8(b)(4)(D) of the Act had been violated, and relied on the 10(k) factors of employer preference and past practice, area and industry practice, relative skills, and economy and efficiency of operations.

[HTML] [PDF]

(Chairman Liebman and Member Schaumber participated.)

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SS1 Entertainment, LLC d/b/a Steven Scott Entertainment (29-AO-00001; 353 NLRB No. 115) New York, NY March 20, 2009. The New York State Employment Relations Board (NYSERB) filed a petition with the Board on Jan. 5, 2009, seeking an Advisory Opinion as to whether the Board would assert jurisdiction over the operations of the named employer under the Board's current standards, pursuant to Sections 102.98 and 102.99 of the Board's Rules and Regulations. [HTML] [PDF]

An unfair labor practice proceeding (SU-60122) is currently pending before NYSERB involving the Associated Musicians of Greater New York, Local 802 (the Union) and the Employer. The parties took opposing positions whether the Board has jurisdiction over the Employer. The Employer is a New York corporation engaged in the business of providing bands and related entertainment to corporate and individual clients. In June 2002, the Employer purchased the name Steven Scott Entertainment and other business assets from Steven Scott Orchestras. Bands and orchestras submit marketing materials to the Employer, and upon customer inquiries seeking entertainment, the Employer meets with the customer and show the bands' promotional materials. When the customer has picked a band, the Employer contracts with the customer to provide the entertainment. The Employer and the band enter into a contract for the event and agree on the fee. The Employer pays the band after the performance.

During the twelve months preceding Sept. 29, 2008, the Employer had gross revenues in excess of \$500,000. Almost \$60,000 of that revenue came from services performed outside the

State of New York. In addition, the Employer received revenues exceeding \$125,000 from commercial clients in New York, some of which would meet the NLRB's jurisdictional standards.

The Board gave its opinion that, inasmuch as the Employer's gross annual revenue is in excess of \$500,000 and its direct inflow in excess of \$50,000, the Employer would satisfy either the Board's retail or nonretail standards. Thus, the Board determined that it would assert jurisdiction over the Employer under the current standards. The Board distinguished the facts set forth in this case from those in *American Federation of Musicians (Penza Theatrical Agency, Inc.)*, 177 NLRB 842 (1969), in which the Board gave the opinion that it would not exercise jurisdiction over the employer's operations. In that case, the employer's customers paid the bands directly, so the employer's "gross volume of business" consisted only of commissions, and the commissions fell below the Board's jurisdictional standards. The Board noted that, the Employer collects the fees from the customers and pays the orchestras and bands itself. Thus, the "gross volume of business" was not limited to commissions for brokering the services.

(Chairman Liebman and Member Schaumber participated.)

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Woodbury Partners, LLC d/b/a The Inn at Fox Hollow (29-CA-28122, et al.; 353 NLRB No. 112) Woodbury, NY March 18, 2009. The Board adopted the administrative law judge's finding, in his supplemental decision on remand, that the Respondent violated Section 8(a)(1) of the Act by discharging an unpopular supervisor in order to interfere with or coerce its employees in their choice of representative. [HTML] [PDF]

The Board rejected the Respondent's affirmative defense that the discharge was motivated by the supervisor's violation of the Respondent's anti-harassment policy and would have taken place even absent the union campaign. The Board found that the timing of the discharge creates an inference that it was intended to interfere with or coerce employees in their choice of representative and that the Respondent failed to rebut this inference. The Board observed that the Respondent presented no evidence to explain why it discharged the supervisor when it did, i.e., long after employees had reported abusive treatment by the supervisor and hard on the heels of the Respondent's discovery of the union campaign. The Board found that the record therefore strongly supports the conclusion that it was the arrival of the Union that jolted the Respondent into action. The Board found that this conclusion is reinforced by the manner in which the discharge was announced. Thus, in announcing the discharge to employees, the Respondent did not state that it was based on the supervisor's alleged violation of the Respondent's anti-harassment policy. Instead, the discharge was broached entirely in the context of the Respondent's opposition to the Union and its desire that the employees abandon the union campaign.

(Chairman Liebman and Member Schaumber participated.)

Adm. Law Judge Howard Edelman issued his supplemental decision Nov. 3, 2008.

## LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Nova Southeastern University (Service Employees Local 32BJ) Fort Lauderdale, FL March 16, 2009. 12-CA-25114, et al.; JD(ATL)-05-09, Judge John H. West.

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## WITHDRAWAL OF ANSWER

(In the following case, the Board granted the General Counsel's motion for summary judgment based on the withdrawal of the Respondent's answer to the complaint.)

Pontiac General Hospital and Medical Center, Inc. d/b/a North Oakland Medical Center (American Federation of State, County and Municipal Employees Local 100) (7-CA-51444; 353 NLRB No. 111) Pontiac, MI March 19, 2009. [HTML] [PDF]

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# LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS IN REPRESENTATION CASES

(In the following cases, the Board considered exceptions to Reports of Regional Directors or Hearing Officers)

# DECISION AND DIRECTION OF SECOND ELECTION

Ecology Services, Inc., Ecology Services Curbside Collection Services, LLC, Ecology Services Anne Arundel County Cartage, LLC, a Single Employer, Pasadena, MD, 5-RC-16235, March 17, 2009 (Chairman Liebman and Member Schaumber)

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(In the following cases, the Board adopted Reports of Regional Directors or Hearing Officers in the absence of exceptions)

# DECISION, ORDER [setting aside election conducted herein], AND DIRECTION OF SECOND ELECTION

Washington State Migrant Council, Seattle, WA, 19-RC-15151, March 13, 2009

# DECISION, ORDER [setting aside election conducted on Sept. 19, 2008], AND DIRECTION OF SECOND ELECTION

Waste Management of New York, LLC, Ulster, Dutchess and Columbia Counties, NY, 3-RD-1542, March 19, 2009

## DECISION AND CERTIFICATION OF RESULTS OF ELECTION

Evelyn Douglin Center for Serving People in Need, Inc., Queens, NY, 29-RC-11702, March 19, 2009

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(In the following cases, the Board granted requests for review of Decisions and Directions of Elections (D&DE) and Decisions and Orders (D&O) of Regional Directors)

Meritcare Thief River Falls Northwest Medical Center, Thief River Falls, MN, 18-RC-17616 and 18-RD-2666, March 18, 2009 (Chairman Liebman and Member Schaumber)

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(In the following cases, the Board denied requests for review of Decisions and Directions of Elections (D&DE) and Decisions and Orders (D&O) of Regional Directors)

Tully Construction Co., Inc., Flushing, NY, 29-RC-11706, March 16, 2009 (Chairman Liebman and Member Schaumber)

Yonkers Contracting Corp., Brooklyn, NY, 29-RC-11707, March 16, 2009 (Chairman Liebman and Member Schaumber)

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